

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DERRICK DEON VINCENT,

Petitioner,

vs.

E. K. MCDANIEL, et al.,

Respondents.

Case No. 2:10-cv-01991-APG-NJK

ORDER


The court of appeals has remanded the action to this court for the limited purpose of determining whether a certificate of appealability should issue from the denial of petitioner's motion for relief from judgment (ECF No. 37).

Petitioner presented two arguments why the court should grant him relief from the judgment. First, with respect to his speedy-trial claim, he argued that the state court admitted that the delay in his trial was the fault of the prosecutor. This court rejected the argument because this court's review is limited to determining whether the decision of the Nevada Supreme Court, not the state district court, was contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States. Petitioner's arguments were nothing different from what he had already presented. In effect, he was just expressing disagreement with the court's determination that his speedy-trial claim was without merit. ECF No. 39, at 2. Reasonable jurists would not find debatable the court's denial of this part of his motion for relief from judgment. This court will not issue a certificate of appealability on this issue.

1 Second, petitioner argued that the state district court allowed a juror to become active in the
2 case because the juror was the sister of the police officer involved in the case. This court rejected
3 the argument because it was a wholly new claim, appearing nowhere in the petition. Reasonable
4 jurists would not find this conclusion to be debatable or wrong. Furthermore, petitioner would need
5 to follow the procedure of 28 U.S.C. § 2244(b) for authorization to file a second or successive
6 petition because the claim is completely new. The court will not issue a certificate of appealability
7 on this issue.

8 IT IS THEREFORE ORDERED that a certificate of appealability is **DENIED**.

9 DATED: June 28, 2016.

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13 ANDREW P. GORDON
14 United States District Judge
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